

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

DERRICK JOHNSON, §
Plaintiff, §
v. § C.A. NO. C-08-255
§
WARDEN DAN JOSLIN, ET AL., §
Defendants. §

**ORDER GRANTING MOTION TO ADD DEFENDANTS AND GRANTING
MOTION FOR SERVICE OF PROCESS**

Plaintiff is a federal prisoner currently incarcerated at the Federal Correctional Institution (“FCI”) in Three Rivers, Texas. He filed the instant action on July 31, 2008 seeking injunctive relief to compel Warden Joslin to transfer him to a medical facility where he could be diagnosed and treated for a painful condition from which he suffers and which he claims is being largely ignored by the medical staff at Three Rivers. Service of process was ordered as to defendants Tharp, Rivers, Humme, and Danmeir. Answers are due on or before December 5, 2008 (D.E. 24-26).

On September 26, 2008, and October 9, 2008, plaintiff filed motions for leave to add Mr. Lee and Mr. Gravette as defendants (D.E. 16, 22), as well as a motion for leave to have the court provide service (D.E. 23). Pursuant to FED. R. CIV. P. 15, a party may amend its pleading once as a matter of course before being served with a responsive pleading.¹ The

¹Plaintiff is given leave to add these two defendants in accordance with the requirements of Fed. R. Civ. P. 15(a)(1)(A). The events about which plaintiff complains occurred in September 2008. He filed his motion to amend to add these defendants September 26, 2008. Plaintiff could not possibly have exhausted his administrative remedies, but pursuant to the Supreme Court’s decision in Jones v. Bock, 549 U.S. 199, 127 S.Ct. 910, 918-19 (2007), exhaustion is an affirmative defense to be raised or waived by defendant.

motions to add Mr. Lee and Mr. Gravette as defendants (D.E. 15, 22) are granted. The motion to have the court provide service (D.E. 23) is granted. An order for service of process will issue.

ORDERED this 7th day of November, 2008.



B. JANICE ELLINGTON
UNITED STATES MAGISTRATE JUDGE